IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)
THURSDAY, THE TENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE R.SUBHASH REDDY

WRIT PETITION NO : 589 of 1995

Between:

M/S. Mahalakshmi Salt Works,
D.No. 20-6-2, Seethapathirao Street, Kakinada-533 001,

Rep.by K.V.V.Prasadarao S/o Seethapathirao
24, Pandurangapurm, Visakhapatnam.

..... PETITIONER

AND

1 The Government of A.P., Rep. by its Prl. Secretary, T.R. & B (Ports)

Department, Secretariat Building, Hyderabad.
2 The Superintending Engineer (Marine) Ports and Projects, Kakinada.
3 The Executive Engineer (Marine), Kakinada.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more in the nature of mandamus declaring the action of the respondent No.1 in notifying the alteration of boundaries of the Kakinada Port by their impugned order in GO.Ms.No.182, TR&B (ports) Dept, dt: 4/07/94 and the consequential action of the respondents 2 and 3 in planting peg marks in the land belonging to the petitioner firm in Sy. NO. 48, 49 and 306 of Nemam village, E.G. Dist in the guise of the impugned notification as illegal, void arbitrary and unconstitutional and consequentially to direct the respondent to refrain from in any way interfering with the possession and enjoyment of the land owned by the petitioner firm before taking appropriate lawful steps to seek to acquire the land in question in accordance with the provisions of the Land Acquisition Act, and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner :Mr.M.R.K.CHOWDARY

Counsel for the Respondent No1. : GP FOR TRANSPORT

The Court made the following :

ORDER:

This writ petition is filed, seeking a Writ of Mandamus, to declare the action of the first respondent in notifying the boundaries of the Kakinada Port, by impugned notification in G.O.Ms.No.182, TR & B (Ports) Department, dated 04-07-1994, and, consequential action of the respondents 2 and 3 in marking the land covered by Survey Numbers 48, 49 and 306 of Nemam Village, East Godavari District, as illegal and arbitrary.

In the affidavit filed in support of this petition, it is stated that the partners of the petitioner's firm are the owners and possessors of the land admeasuring Ac. 141.45 cents covered by Sy. Nos. 48, 49 and 306 in Nemam village, East Godavari District. It is stated that the said land is purchased by several registered sale deeds during the period from 1972 to 1981. It is the case of the petitioner that though the said land is a private patta land, the respondents by issuing impugned notification are taking steps to alter the port limits in exercise of powers under Sections 4 and 5 of the Indian Ports Act 1908, and interfering with their possession. It is the case of the petitioner that inasmuch as the said land is a private patta land, owned by them, unless said land is notified for any public purpose, by merely issuing the impugned notification, to alter the port limits, the respondents cannot interfere with their possession. It is submitted that if the said land is required, for extension of port limits, the same has to be notified under the provisions of the Land Acquisition Act, 1894, and in absence of which, they cannot interfere with their possession.

In the counter affidavit filed on behalf of the respondents, it is stated that though steps are taken to mark the limits, but, the same is only for fixation of boundaries of the port and further steps will be taken having regard to the necessity in future.

Section 5 of the Indian Ports Act, 1908 empowers the Government to alter the limits of any port, but the same is subject to rights over the private properties. Even Section 10 of the Act, which empowers the conservator for removal of obstructions, timber, raft etc., in the limits of the port, but, the said power is also subject to rights over the

private properties. Therefore, a reading of the aforesaid provisions indicate that notification for extension of port limits is subject to rights of the holders of such private property. Further, the impugned notification also did not indicate any specific land with survey number to be brought within the limits of the port. In that view of the matter, as it is stated in the counter affidavit that there is no inference and only for the purpose of marking limits of the port, survey was made, I dispose of the Writ Petition directing the respondents not to interfere with the possession of the petitioner over the land in question without following due process of law. However, if the said land is required for port limits, it is open for the respondents to acquire the same, as per the procedure contemplated under law.

Subject to the above direction, the writ petition is disposed of. No order as to costs.

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February 10, 2005.

Rns/Msnr.

To

1 The Prl. Secretary, T.R. & B (Ports)

Department, rep. Government of A.P.,

Secretariat Buildings, Hyderabad.

2 The Superintending Engineer (Marine) Ports and Projects, Kakinada.

3 The Executive Engineer (Marine), Kakinada.

4 Two CCs to G.P.for Transport, High Court Buildings,

High Court of A.P.,

Hyderabad(OUT)

5 Two CD copies.